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SENATE

{ REPORT
No. 1881

BROOKLYN STEEL WAREHOUSE CO.

AUGUST 22, 1960.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 9958]

The Committee on the Judiciary, to which was referred the bill (H.R. 9958) for the relief of Brooklyn Steel Warehouse Co., having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the bill is to pay to the Brooklyn Steel Warehouse Co. of Brooklyn, N.Y., the sum of \$3,458.19, for storage charges on certain equipment owned by the United States and leased to the Premier Textile Machinery Co. of Brooklyn, N.Y.

STATEMENT

The Department of the Air Force interposes no objection to the enactment of the bill, and has commented in its report to the Congress on the matter that, although the Government is not legally liable, the facts in the case are felt by the Department to be grounds for equitable relief.

The facts in the case are summarized in the favorable report of the Committee on the Judiciary of the House of Representatives as follows:

Under a facilities lease agreement between the United States and Premier Textile Machinery Co. dated March 11, 1953, certain Government-owned machine tools, 19 in num-

ber, were rented to the company for use in its operations.

The company went into bankruptcy and the machine tools were located in the claimant's warehouse. The Government claimed the tools and requested their return to the Air Force which request was refused on the claimant's contention that it had an unsatisfied lien on the machine tools.

A replevin action was brought by the Government on August 25, 1954, to which the defendant filed an answer and asserted a counterclaim for storage charges. The machine tools were released by the claimant to the Government on November 16, 1954, under a stipulation wherein the claimant reserved its legal rights. A motion to dismiss the counterclaim was allowed on November 8, 1959, on the ground that the court lacked jurisdiction to entertain a counterclaim on a replevin action.

The Department of the Air Force in its report of no objection to the proposed legislation states that, although the Government is not legally liable for the storage charges, nevertheless there are substantial grounds for equitable relief. The grounds are stated in its report as follows:

"(a) The Brooklyn Steel Warehouse Co. did store Government-owned equipment.

"(b) The Air Force contracting officer concerned has stated, in writing, that the Air Force lessee, Premier Textile Machinery Co. was within its rights in placing the equipment in storage and was entitled to reimbursement for storage costs.

"(c) Due to the bankruptcy of Premier Textile Machinery Co., the Brooklyn Steel Warehouse Co. was not fully reimbursed for the storage of the Government equipment, and the fact that the equipment was Government-owned precluded their obtaining a warehouse lien in order to obtain payment.

"(d) The Brooklyn Steel Warehouse Co. received \$640.12 from the bankruptcy proceedings involving the Premier Textile Machinery Co. as a partial satisfaction of the storage charges. It is understood that this represented 25 percent of their claim against the Premier Textile Machinery Co. However, due to the 5-month delay by the Government in removing the tools after the Brooklyn Steel Warehouse Co. agreed to such removal, the actual storage charges became greater than the amount due from the Premier Textile Machinery Co."

The committee considered the basis for equitable relief and in consideration thereof, viewed in the light of the benefits received and the delay of the Government in removing its tools from the claimant's warehouse, recommends that the legislation be favorably considered.

The committee believes that the bill is meritorious and recommends it favorably.

Attached and made a part of this report is a letter, dated May 13, 1960, from the Department of the Air Force.

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY,
Washington, May 13, 1960.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to the Department of the Air Force report on H.R. 1345, 85th Congress, a bill for the relief of Brooklyn Steel Warehouse Co., and to the supplemental report on H.R. 9958, 86th Congress, an identical bill. The Department of the Air Force now submits a revised report on H.R. 9958 and interposes no objection to its enactment.

The purpose of H.R. 9958 is to authorize and direct the Secretary of the Treasury to pay to the Brooklyn Steel Warehouse Co., of Brooklyn, N.Y., the sum of \$3,458.19 in full settlement for a claim for storage charges on certain equipment owned by the United States and leased to the Premier Textile Machinery Co., of Brooklyn, N.Y., in July 1952.

On March 11, 1953, the United States entered into a facilities lease agreement with Premier Textile Machinery Co. Under this agreement, certain enumerated Government-owned machine tools were rented to the Premier Textile Machinery Co. for use in its operations. In the early part of 1954, the Premier firm encountered financial difficulty and attempted to negotiate a plan of arrangement under the Bankruptcy Act. The arrangement failed and the Premier firm was adjudicated a bankrupt. At the time of the bankruptcy, 19 machine tools which had been leased to the bankrupt were located in the warehouse of Brooklyn Steel Warehouse Co.

The U.S. attorney representing the United States in the bankruptcy proceeding, sent a letter dated June 29, 1954, to the Brooklyn Steel Warehouse Co. requesting that the machine tools in their possession be returned to the Department of the Air Force. On August 11, 1954, the Department of the Air Force wrote a letter to the Brooklyn Steel Warehouse Co. asserting claim to the 19 machine tools and urging the delivery of them to the Government. The warehouse owners refused to comply with these requests, contending that they had a lien on the machine tools.

On August 25, 1954, the Government, through the U.S. attorney, filed a replevin action to recover possession of the tools held by the Brooklyn Steel Warehouse Co. The replevin action was filed in the U.S. District Court for the Eastern District of New York as civil action No. 14695. Included in the defendant's answer to that replevin action was a counterclaim wherein the Brooklyn Steel Warehouse Co. sought to recover from the Government certain storage charges. On November 16, 1954, the United States and the Brooklyn Steel Warehouse Co. entered into a stipulation whereby the machine tools in dispute were released to the United States with a reservation of the rights of Brooklyn Steel Warehouse Co. The replevin action and counterclaim in civil action No. 14695 were finally disposed of on November 9, 1959. On that date, upon motion by the Government, the defendant's counterclaim was dismissed, and since no issues remained in the replevin action, it was discontinued. The chief judge in the district court dismissed the counterclaim on the ground that the court

lacked jurisdiction to entertain a counterclaim in a replevin suit instituted by the United States.

Although the Government is not legally liable, since there is no privity of contract between the Government and the Brooklyn Steel Warehouse Co., the following facts are felt to be grounds for equitable relief:

(a) The Brooklyn Steel Warehouse Co. did store Government-owned equipment.

(b) The Air Force contracting officer concerned has stated, in writing, that the Air Force lessee, Premier Textile Machinery Co. was within its rights in placing the equipment in storage and was entitled to reimbursement for storage costs.

(c) Due to the bankruptcy of Premier Textile Machinery Co., the Brooklyn Steel Warehouse Co. was not fully reimbursed for the storage of the Government equipment, and the fact that the equipment was Government-owned precluded their obtaining a warehouse lien in order to obtain payment.

(d) The Brooklyn Steel Warehouse Co. received \$640.12 from the bankruptcy proceedings involving the Premier Textile Machinery Co. as a partial satisfaction of the storage charges. It is understood that this represented 25 percent of their claim against the Premier Textile Machinery Co. However, due to the 5-month delay by the Government in removing the tools after the Brooklyn Steel Warehouse Co. agreed to such removal, the actual storage charges became greater than the amount due from the Premier Textile Machinery Co.

Although the Air Force had no direct contract with the Brooklyn Steel Warehouse Co., the amount claimed in the bill is not considered to be excessive and it is believed that payment of the amount claimed would result in an equitable settlement.

Therefore, the Department of the Air Force interposes no objection to the enactment of H.R. 9958.

The Bureau of the Budget has advised this Department that it has no objection to the submission of this report.

Sincerely yours,

P. B. TAYLOR,
Assistant Secretary of the Air Force

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